

11/21/82

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
HERBERT GOELTZER,
Appellant,
v.
Secretary, DEPARTMENT OF
VETERANS' AFFAIRS,
Respondent.
Case No. 82-11-PC
* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to s.230.44(1)(d), stats., of a failure to appoint the appellant to a position at the Wisconsin Veterans Home. The respondent has moved to dismiss the appeal as untimely filed. The facts which follow appear to be undisputed.

FINDINGS OF FACT

1. The appellant applied and was certified for a position in the classified civil service at the Wisconsin Veterans Home.
2. Following an interview by the commandant of the Home, the appellant was notified by a letter which he received on December 24, 1981, that he had not been appointed.
3. The appellant protested the hiring process to the Department of Employment Relations and was informed verbally by an employee of that agency on January 18, 1982, he should appeal to the Commission, giving the appellant the wrong address for the Commission, i.e., 149 E. Wilson Street, instead of 131 West Wilson St., Madison.
4. The appellant mailed his appeal on January 20, 1982, to the Commission using the wrong address and it was not received by the Commission until January 27, 1982.

CONCLUSIONS OF LAW

1. Pursuant to s.230.44(3), stats., an appeal must be received by the Commission within thirty days or it "may not be heard."

2. The Department of Veterans Affairs cannot be equitably estopped from arguing that the appeal is untimely because there was no inequitable conduct on its part.

3. This appeal was filed more than 30 days after both the effective date of the denial of the appellant's appointment, and the date he received notice of that denial, and therefore, was not timely filed and may not be heard by the Commission, pursuant to s.230.44(3), stats.

OPINION

The Commission's authority to hear cases is limited by s.230.44(3), stats. If an appeal is not filed within 30 days after the effective date of the action or within 30 days after the appellant is notified of the action, whichever is later, the appeal "may not be heard." This provision is considered jurisdictional in nature and a late filing cuts off the Commission's authority to hear an appeal. See, e.g., Maegli v. Schmidt, 74-6 (1/20/75); State of Wisconsin ex rel DOA v. Personnel Board, Dane County Circuit Court, No. 149-295 (1976).

The only circumstances under which this result can be avoided are those which give use to an equitable estoppel. Equitable estoppel has been defined as "the effect of voluntary conduct of a party whereby he or she is precluded from asserting rights against another who has justifiably relied upon such conduct and changed his position so that he will suffer injury if the former is allowed to repudiate the conduct." Porter v. DOT, 78-154-PC (5/14/79). In order to establish estoppel against a state agency, "the acts of the state agency must be proved by clear and distinct evidence and must amount to a fraud or a manifest abuse of discretion. Surety Savings & Loan Assn. v. State of Wisconsin (Division of Highways), 54 Wis. 2d 438, 445, 195 N.W. 2d 464 (1972).

This case involves an appeal of a failure to appoint to the appellant to a position in the classified civil service. The power of appointment is vested

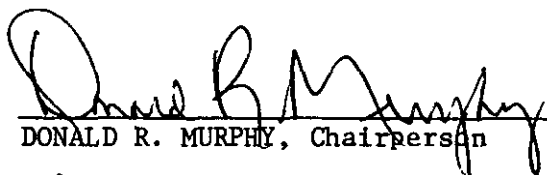
solely in the appointing authority, or head of the employing agency, see ss. 230.06(1)(b), 230.03(4), stats., in this case the Department of Veterans Affairs. The Department of Employment Relations, which gave the appellant the misinformation about the Commission's address, is not part of the Department of Veterans Affairs and has no legal authority over, or involvement in, the decision by DVA as to whom to appoint from among those certified. Therefore, there has been no inequitable conduct on the part of the respondent DVA and there can be no application of the doctrine of equitable estoppel to prevent the conclusion that this appeal was untimely filed.

Thus, while the Commission believes that it is unfortunate that this appeal cannot be heard under these circumstances, the law in question (s.230.44(3), stats.) is strict and compels this result.

ORDER

This appeal is dismissed for lack of jurisdiction as untimely filed.

Dated: May 12, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


JAMES W. PHILLIPS, Commissioner

AJT:ers

Parties

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